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**Via Email & First Class Mail**

Mr. John A. Carrigan, Section Chief  
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Attorney General's Office  
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**Re: New Ventures Associates, LLC; Pre-Treatment/Phase 1A**

Dear Mr. Carrigan and Attorney Ireland:

This office represents New Ventures Associates, LLC ("New Ventures") in connection with the closure of the Crow Lane Landfill (the "Landfill") and the Preliminary Injunction entered in Suffolk Superior Court, Civil Action No 06-0790 (the "Order"). We are in receipt of the Department's letter dated July 4, 2007 issued under Paragraph 9 of the Order. The letter lists six items that must be addressed by New Ventures prior to resumption of placing grading and shaping materials at the Landfill. We respond generally and specifically as follows:

As New Ventures has stated on many occasions, the Department's use of Paragraph 9 to penalize New Ventures for its alleged deficiencies or violations of the Order has been shortsighted and has resulted predictably in the extended exposure of landfill gases to the residents of the City of Newburyport. When New Ventures entered into the Order with the Department in October 2006, it was with the express understanding that the approved closure materials that were placed in accordance with the Department's policy for the Closure of Inactive Unlined Landfills and which were part of the ACO would be enclosed by the cap within ten (10) months. However, the Department's decision to exercise Paragraph 9 sanctions in order to halt

the closure of the Landfill and to prevent the construction of the berm extends the closure unnecessarily and results in an incomplete berm.

The odors referenced in the Department's July 4, 2007 filing are a direct result of the Department's decisions. New Ventures has installed a landfill gas extraction system that has operated for the past nine months and has removed the H<sub>2</sub>S with a ninety-five (95%) percent or greater destruction rate. Under the Order, the closure and capping of the Landfill should be almost complete. In addition to the economic harm that New Ventures has suffered as a result of the Department's additional requirements and actions, it has also allegedly affected some residents of the City of Newburyport who have filed complaints in 2007.

**1. C&D Mixture Is Not One To One.**

**Response:** C&D materials have been mixed at a one to one ratio in accordance with the Order. The Department allowed the placement of dirt fines (as compared to C&D materials) on the Landfill at the top of the grade to protect the Geocomposite in 2006. The dirt fines have been added recently on top of the old C&D material for two purposes. First, the material protects the Geocomposite, and second, it was provided to offer additional cover due to the absence of clay or soils. Our readings show that this cover has reduced the Landfill gas emissions significantly in this area.

**2. Geotechnical Evaluation Of The Perimeter Berm.**

**Response:** We are in receipt of a letter dated July 3, 2007 from Shaw Environmental, Inc. that responds to the additional berm analysis and materials provided by New Ventures and SITEC on May 30, 2007. It cites three (3) deficiencies.

Goldberg & Zoino Associates (GZA) initially designed the Landfill berm with a steep one to one slope. In response to the questions raised by the Department, SITEC, the engineer of record, retained a geotechnical consultant and returned with a modified design to the GZA plan to decrease the slope. In addition, New Ventures submitted a letter from the project engineer who was on-site during the excavation of the organic materials, was on-site during the digging of test pits to expose concrete and debris, and was on-site for the disposal of the C&D materials. SITEC stamped the revised plan representing that the berm meets engineering standards. New Ventures also presented a wide array of photographs showing organics being excavated from the Landfill and being disposed on the Landfill. Notwithstanding this considerable evidence, the Department continues to request additional information and continues to request New Ventures to prove a negative. There is no evidence to support this demand.

While New Ventures will share the Shaw letter with its engineer of record and its consultants and respond in a timely manner, New Ventures must remind the Department that its action in refusing to accept the extensive information and stamped plans submitted by New

Ventures presents two continuing problems. The Department's failure to allow construction of the berm has resulted in the unnecessary exposure of the southwest corner to landfill gas emissions and leaves the Landfill with its weight and mass but without the recommended berm construction. Second, as a result of the Department's failure to allow berm construction to go forward, the absence of the berm, which was intended as a sealant around the perimeter of the Landfill, has extended exposure to landfill gas emissions. A quick review of Shaw's letter reveals no examples or information which suggests that New Ventures' representation that organics were removed or that the SITEC stamped submission, is incorrect. Rather, Shaw seeks a conclusive demonstration that all unsuitable soils have been removed from under the existing berm. This is an impossible request.

### **3. The LFG Pretreatment System.**

**Response:** DEP has again raised a question regarding intrusion of ambient air into the Landfill pretreatment system and alleged that the three pretreatment containers are not airtight and therefore not permanent. This is not correct. New Ventures has placed sealant along the containers to reduce infiltration of ambient air. Appendix A of the Order, the Landfill Gas Control Protocol, establishes the general performance standards for the treatment and burning of the Landfill gas. According to protocol, the pretreatment shall be considered to be in compliance with the performance criteria of the Order provided that "the H<sub>2</sub>S concentration of the landfill gas in the flare does not exceed the minimum 95% reduction of H<sub>2</sub>S or the 1.01 pounds/hour H<sub>2</sub>S criteria for any two hours during a twenty-four hour period." While New Ventures continues to monitor the amount of the ambient air coming into the system, there is no violation of the Order and the Department's citation of this part of the Order is in error.

### **4. Weekly Reports.**

**Response:** Mr. Michael Quatromoni of SITEC Environmental, Inc. is the engineer responsible for providing the weekly reports. Mr. Quatromoni responded to you at our meeting last month by informing you that since the Landfill was shut down there was little activity at the Landfill and he considered it critical to perform work associated with the berm analysis and CAD plan design modification to be submitted to the Department. Mr. Quatromoni has full knowledge that New Ventures' 24/7 working personnel provides copies of odor complaints to the Department and Shaw Environmental is on the site at least three days a week. We will request Mr. Quatromoni to bring the weekly report requirement into compliance. This is clearly not a violation that warrants the halting the disposal of C&D material at the Landfill.

### **5. FML Extension.**

**Response:** At the time of the completion of the FML on the second phase of the Landfill closure during the winter of 2006-2007 due to the frozen ground, New Ventures was unable to drop the FML down vertically at the base of the perimeter slope. As a result, the FML was

extended along the then elevation of the berm. It has since been covered. New Ventures was unable to anchor this FML because of the winter conditions. The extension of the berm ten to fifteen feet above the perimeter has been intended to act as a sealant in addition for its structural support. Following the Department's decision not to allow construction of the berm, New Ventures is now placed in a position of having to dig a lengthy trench and expose the Landfill and the neighborhood to landfill gases in order to pull the FML from under the roadway and drop it adjacent to the inner perimeter. New Ventures has performed preliminary exploratory work and will anchor the FML as required by the Order. When New Ventures commenced the exploratory work to come into compliance with this demand, it was instructed by the Department to cover the trench due to the odors. New Ventures brought SITEC on site to review the work. New Ventures anticipates that it will take additional time to complete the work.

**6. Leachate.**

**Response:** New Ventures has continued to pump the leachate collection tanks (with the exclusion of Tank 4). In addition, New Ventures will explore options to manage any leachate in the wetlands including using a vacuum truck to remove leachate in the eastern wetlands. New Ventures notes that leachate discharges have been associated with the Landfill well before New Ventures' acquisition and involvement.

New Ventures requests that the Department lift the Paragraph 9 sanctions and allow closure to continue so that the Newburyport residents do not have to be exposed to the Landfill gases any longer than necessary.

Thank you.

Sincerely,

Richard A. Nylan, Jr.

RAN:tgc/kad

cc: Michael W. Dingle, Esq.  
Mr. William Thibeault  
Mr. Michael Quatromoni  
Mark R. Reich, Esq.  
Drew W. Hoyt, Esq.